

Entangled rights and reproductive temporality: Legal form, continuous improvement of living conditions, and social reproduction.

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Abstract: This chapter reads law and time scholarship through social reproduction theory in arguing that the right to the continuous improvement of living conditions (CILC) could work as an entangled legal form that reproduces temporality. Such rights-work thinks about the legal reproduction of time as a necessary dimension of this right, in order to flesh out the temporal infrastructure which is socially necessary to make a right to CILC thrive. The right holds out a fruitful lifeline that may provide a sheltered path away from the violence and could be thickened into a sturdier care infrastructure of soothing time, but could also become an overwhelming and frustrating tangle. Entangled rights are porous legal forms which reproduce time by selecting in the people and things that make law sustainable and restorative, even as they may also become exhausting and depleting. The right to the continuous improvement of living conditions could be such an entangled right through the legal reproduction of normative timeliness, material time and felt temporality

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1. Introduction: On rights-work as legal reproduction

In watching this collection build in response to Goldblatt and Hohmann's call,¹ I have begun to see this rights-work as a kind of collaborative legal reproduction. We

¹ J Hohmann and B Goldblatt, 'Introduction: Situating the right to continuous improvement of living conditions and considering its interpretations and applications' this volume.

contributors to this collection have taken hold of an empty legal form and turned it into a range of legal beings that might thrive if supported, or might fade away. Yet it quickly became obvious that the right to continuous improvement of living conditions² was not as empty as we might have first imagined it to be.³ As we talked and wrote, wrote and talked, people and things tumbled out of the form and claimed attention. The possibility of fleshing out the right, a possibility that once seemed to take us down an open and free path, came to reveal a variety of expectations, some easier to handle than others. Chief amongst them perhaps was the concern that a commitment to continuous improvement of living conditions may buy into an extractive model of growth, one which depletes⁴ rather than restores.⁵ Others emerged through thinking about different rights infrastructures⁶ and their cultures, resources and likely effects in fleshing out the right. When we scholars do this work of searching out rightful paths - watching how they are used, imagining how they might be, adopting resources from elsewhere in fixing them up - we take rights as material legal forms and reproduce them anew.

We are not in full control of our reproductive labour,⁷ and this work pulls us in uncomfortable directions.⁸ There will be times when withdrawal from rights labour seems best because the rights have become encrusted with channels that divert resources away from those that need them. But this work of imagining and actualising⁹ what rights might be is socially necessary labour. It offers a way of doing legal rights that is neither the promotion of a liberal progressive agenda nor a critical rights-scepticism, but stays attentive to both while holding on to a materialist approach to the world. Struggling over rights is socially necessary work because rights struggle is one of the life-making activities that is routinely denigrated and devalued by worldly

² The right is part of Article 11 of the UN's International Covenant on Economic, Social and Cultural Rights adopted 16 December 1966, entered force 3 January 1976) UNGA resolution 2200A (XXI) (ICESCR).

³ J Hohmann, 'Sources for a nascent interpretation of the right to continuous improvement of living conditions', this volume.

⁴ S M Rai, C Hoskyns and D Thomas 'Depletion: The Cost of Social Reproduction,' (2014) 16(1) *International Feminist Journal of Politics* 86.

⁵ B Goldblatt, 'The work of living – social reproduction and the right to continuous improvement of living conditions' this volume; S Skogly, 'The right to continuous improvement of living conditions and the human rights of future generations – a circle impossible to square?' this volume; for an account of the problem with an extractive property-based approach see M Davies, 'Can property be justified in an entangled world?', (2020) 17 *Globalizations* 1104.

⁶ S Fredman 'Measure for Measure' this volume.

⁷ M O'Brien, *The Politics of Reproduction* (Routledge and Kegan Paul, 1989).

⁸ R Chadwick, 'On the politics of discomfort' (2021) *Feminist Theory* online at doi:10.1177/1464700120987379.

⁹ D Cooper, *Everyday Utopias* (Duke University Press 2013)

arrangements. Feminists and other critical legal actors have come to occupy this terrain of rights labour by developing sets of practices which entail selecting in the people and things that might just push the legal form of rights in a direction that comforts and shelters.¹⁰ As we write, and as the writing feeds into other activities, we are actively reproducing those legal worlds and making law accountable to social reproduction.

I turn to the materialist feminist thought of social reproduction theory to help me make sense of this rights work because it calls for the identification of the actual ways that life-making activities contribute to capitalist social relations, *and* promise to make the world otherwise.¹¹ As Ferguson¹² explains in her recent account of the development of social reproduction thought, the utopian dimensions of social reproduction theory are more evident in the autonomist Marxist feminist school,¹³ while the more critical-of-the-world-as-it-is dimensions come through in those social reproduction theorists who continue to draw on a Marxist theory of value.¹⁴ Social reproduction theory has shown us how the continuous time needed for suturing reproduction and production together in liveable ways is extracted from gendered and marginalised bodies with no return.¹⁵ If social time can be filled out more slowly¹⁶ and

¹⁰ M Enright, K McNeilly and F de Londras, 'Abortion activism, legal change and taking feminist law work seriously' (2020) 71 *Northern Ireland Legal Quarterly* OA7; G Bhattacharyya, 'The poetics of justice: aphorism and chorus as modes of anti-racism' (2019) 27 *Identities* 53.

¹¹ D Alessandrini, 'Of Value, Measurement and Social Reproduction' (2018) 27(4) *Griffith Law Review* 393; D Alessandrini, 'Immaterial Labour and Alternative Valorisation Processes in Italian Feminist Debates: (re)exploring the 'commons' of re-production, (2012) *Feminists@Law* <<https://journals.kent.ac.uk/index.php/feministsatlaw/article/view/32>>; I Bakker, 'Social Reproduction and the Constitution of a Gendered Political Economy' (2007) 12(4) *New Political Economy* 541; T Bhattacharya (ed) *Social Reproduction Theory: Remapping Class, Recentering Oppression* (Pluto Press 2017); J Elias and SM Rai, 'Feminist everyday political economy: Space, time and violence' (2019) 45(2) *Review of International Studies* 20.

¹² S Ferguson, *Women and Work: Feminism, Labour and Social Reproduction* (Pluto 2020).

¹³ S Federici, *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle* (PM Press 2012).

¹⁴ Such as L Vogel, *Marxism and the Oppression of Women: Toward a Unitary Theory*, 2nd edn (Haymarket Books 2013).

¹⁵ A Mezzadri, 'On the value of social reproduction' (2019) *Radical Philosophy* <<https://www.radicalphilosophy.com/article/on-the-value-of-social-reproduction>>

¹⁶ On this point, social reproduction theory connects with critical race perspectives that document and critique the uneven exhaustion of differently situated racialised bodies, e.g. A Emejulu and F Sobande (eds) *To Exist is to Resist: Black Feminism in Europe* (Pluto 2020), including through accelerated rates of death, see R Gilmore Wilson, *Golden Gulag: Prisons, Surplus, Crisis and Opposition in Globalizing California* (University of California Press 2007), and erasure of entitlement to land through title registration, see S Keenan, 'From Historical Chains to Derivative Futures: Title Registries as Time Machines' (2019) 20(3) *Social and Cultural Geography* 283. The commitment to a political aesthetics of slowness in the university is a kind of material intervention that seeks to challenge these dynamics of exhaustion, extraction and erasure and their infection of academic labour e.g. A Mountz et al, 'For slow scholarship: A feminist politics of resistance through collective action in the neoliberal university' (2015) 14(4) *ACME: An International Journal for Critical Geographies* 1235 <<https://www.acme->

sustainably, this allows us to imagine that a legal norm of continuous improvement could mean something other than a commitment to a linear, progressive and extractive continuity. How the continuity of ‘continuous improvement’ takes legal form, and goes on to shape and be shaped by social worlds through that form, is a matter for rights labourers and their kin. Social reproduction offers the potential to think through the content and the form of the right¹⁷ in ways which see, but distance themselves from, commodifying and extractive practices. Building on social reproduction theory’s concern for the non-recognition of time spent on life-making activities,¹⁸ and its commitment to the valuing of time spent providing care on non-capitalist terms, I turn to scholarship on law and time¹⁹ to flesh out how a legal form of continuous improvement of living conditions (CILC) might reproduce itself anew through rights-work which selects-in less obvious sources.

Some scholarship on law and time addresses international human rights explicitly by asking questions about the *progressive* realisation of rights,²⁰ or the *cyclical* monitoring of human rights implementation,²¹ or *delay* in addressing injustices.²² But most of the scholarship on the relationship between law and time that I am drawing on here does not focus on international human rights in particular. Rather I think it could be useful for thinking through the under-explored right to continuous improvement of living conditions, because it speaks to the more ephemeral intangible

journal.org/index.php/acme/article/view/1058>; K van Marle, ‘Life is not simply fact’: Aesthetics, atmosphere and the neoliberal university’ (2018) 29 *Law and Critique* 293.

¹⁷ For an earlier account of how the materialist legal analysis of rights as commodity forms needs to accommodate patterns of consumption and social reproduction, see R Fletcher, *Legal Form, Commodities and Reproduction: Reading Pashukanis*, in M Drakopoulou (ed) *Feminist Encounters with Legal Philosophy* (Routledge 2013) 138.

¹⁸ Ferguson n 12 p 9 comments: ‘women do the majority – 75 per cent – of the world’s unpaid care and domestic work. They spend up to three hours more per day cooking and cleaning than men do, and anywhere from two to ten hours more per day looking after children and the elderly. Whatever the hardship or rewards of such work, it remains the case that those who govern our countries and economies do not recompense or adequately recognised it as a contribution to overall social wealth’.

¹⁹ T Chowdhury, *Time, Temporality and Legal Judgment* (Routledge 2020); M Enright, ‘“No. I Won’t Go Back to it”: National Time, Trauma and Legacies of Symphysiotomy in Ireland’ in E Grabham and S Beynon-Jones (eds) *Law and Time* (Routledge 2018); E Grabham, *Brewing Legal Times: Things, Form and the Enactment of Law* (University of Toronto Press 2016); C Greenhouse, *A Moment’s Notice* (Cornell University Press 1996); J Harrington, ‘Time’ in *Towards a Rhetoric of Medical Law* (Routledge 2017) chapter 4; S Keenan n 16; R Mawani, ‘The Times of Law’ (2015) 40 *Law and Social Inquiry* 253; M Valverde, *Chronotopes of Law* (Routledge 2015);

²⁰ JN Erdman, ‘Theorizing Time in Abortion Law and Human Rights’ (2017) 19(1) *Health and Human Rights* 29

²¹ K McNeilly, ‘Are Rights out of Time? International Human Rights Law, Temporality and Radical Social Change’ (2019) 28(6) *Social and Legal Studies* 817.

²² KG Young, ‘Waiting for Rights: Progressive Realization and Lost Time’ in KG Young (ed) *The Future of Economic and Social Rights* (Cambridge University Press, 2019); Enright n 19.

dimensions of the right. Thinking about the right from a perspective which theorises law and time helps us identify the temporal particularity of the right, while also seeing its connections to other rights. Secondly, the law and time literature approaches law as a diverse field of activity comprised of statute, cases, activist lawyering, and other processes of legal reproduction that move in and out of the terrain of international human rights. These porous processes reproduce law as they take and make time by translating the apparently non-legal (e.g. evidence of the probability that a disease will develop in a particular time frame) into legal phenomena (e.g. legal standards for deciding when a claim for financial assistance or compensation is met), and back again. By drawing on the insights of scholarship on law and time, I show how rights labour might reproduce the legal form of CILC so as to flesh out alternatives to an extractive, flattening version.

First, I show how the scholarship on time and human rights is concerned with an overly linear approach to law's sense of normative progress over time, and that this contributes to a critical attachment to the disruptive potential of an 'untimely' future as an alternative. I argue that one way to avoid being limited by binaries of progress and disruption, is to build on this concern about the progressive time of human rights and engage with distinctions between the normative, material and affective dimensions of law's timeliness, time, and temporality respectively. My hope is that such an engagement will facilitate future conversations between international human rights and other legal sources of rights. If we can draw on senses of legal time that operate across constitutional,²³ common law,²⁴ statutory,²⁵ and vernacular²⁶ rights, this is likely to make a dialogue of mutual interest in 'continuous improvement' more relevant across different constituencies of rights labourers. Different rights labourers will have

²³ Ibid; see also F de Londras on an ecosystem of constitutional interpretation, an ecosystem that could include judicial innovation with timely matters: 'In Defence of Judicial Innovation and Constitutional Evolution in Laura Cahillane, Tom Hickey & James Gallen (eds) *Judges, Politics and the Irish Constitution* (Manchester University Press, 2016).

²⁴ Chowdhury traces a spectrum of abstract and concrete adjudicative temporalities as judges make some factual contexts more proximate than others (n 19) 13; Mawani reads Parker through Bergson's attachment to the flow of time to think about the common law as having duration and being in a state of becoming 'oriented to the past while reaching to the unforeseeable future' (n 19) 255. Ring shows how the Irish courts constructed a 'dominion-centred' approach to enable prosecutions of historical child sexual abuse cases by justifying a delay in reporting of abuse if the victim was under the dominion of the perpetrator, see S Ring (2017) 'The Victim of Historical Child Sexual Abuse in the Irish Courts 1999–2006' 26(5) *Social & Legal Studies* 562.

²⁵ C Murray 'Moving towards rights-based mental health law: the limits of legislative reform' (2013) 49 *Irish Jurist* 161.

²⁶ S Madhok, *Vernacular Rights Cultures: The Politics of Origins, Human Rights and Gendered Struggles for Justice* (Cambridge University Press 2021).

different expertise and motivation. Making the most of a dialogue between them means imagining a multi-dimensional process which has points of connection and disconnection so that the dialogue can move things along, possibly in different but mutually supportive directions, and possibly at different paces. When I use the label ‘normative’ to draw attention to the parts of the scholarship which see some sense of a prescriptive timeliness at work, I am reading others reparatively²⁷ for my purposes. For example, I show how Harrington’s work on law as rhetoric²⁸ provides insights which help me draw out normative dimensions of legal time, even though his main concern is with material and affective dimensions of law’s persuasive and rhetorical use of time. I identify enduring, punctual and porous time as evidence of light normative commitments in the persuasive rhetoric of common law, statute, and evidence-based methods of legal claim-making, respectively. The material dimensions of law’s relationship with time allows me to put the older materialist attachments of social reproduction into conversation with a newer materialist approach to lively, or eager, objects.²⁹ The vibrant matter of Grabham’s eager objects throws up concrete things, from cells to paperwork, that make a material difference to how time is counted. Eager objects are social artefacts of a world which an older materialist sees as generating value for capitalism through the sequencing and synchronising of activities that suture together productive and reproductive worlds. The third, felt, dimension of time draws our attention to the visceral sensations and knowing emotions that are felt as temporal legal arrangements send a charge through space, a charge which might calm things down, exert pressure, or express concern. If legal sources can demonstrate such diversity and multidimensionality in the experience of time, then imagining and actualising the continuous improvement of living conditions as a legal form of time which replenishes rather than depletes becomes more tangible.

Thinking about how the legal form of continuous improvement could reproduce with these different sources of legal time offers a pathway that pulls against extractive

²⁷ A reparative reading is one that seeks out other contributions in the work for the purposes of enriching the ‘gene pool’ of critical perspectives; see E Kosofsky Sedgwick, ‘Paranoid Reading and Reparative Reading; or, You’re So Paranoid, You Probably Think This Introduction is About You’ in E Kosofsky Sedgwick (ed) *Novel Gazing: Queer Readings in Fiction* (Duke University Press 1997).

²⁸ Harrington (n 19).

²⁹ Grabham (n 19) chapter 1; J Hohmann, ‘Diffused Subjects and Dispersed Power: New Materialist Insights and Cautionary Lessons for International Law (forthcoming 2021) *Leiden Journal of International Law*; A. Perry-Kessaris, The Pop Museum of Legal Objects project: An experiment in socio-legal design’ (2017) 68(3) *Northern Ireland Legal Quarterly* 225.

possibilities. By pressing against a legal trend of ongoing relentless ‘improvement’ and doing more with less, it offers the possibility of a replenishing alternative, but one which knows its own potential for co-option. This pressing seeks out a legal form of rights which refuses the flattening consequences of commensurable contractual exchange and the thinning effects of linear progression. By watching and working law’s porosity, as social relations become legal and legal relations become social, we can make visible-for-use a thicker, multi-layered and circuitous series of connections between timely norms, materials and affects. Such a reproductive temporality of the continuous could animate the legal right by working its relationship with material resources and affective arrangements in generating continuous improvement of living conditions. I argue that we might best think of the legal form of this right as ‘entangled’ since it holds different relations together and could go in different directions depending on how it is used. In thinking through entangled rights, I’m working with one of Haraway’s knots of citation as an indicator of a mixed genealogy of knowledge, a knot that is crafted by weaver and fabric.³⁰ I started to think about entangled legal forms while trying to make sense of everyday rights engagements as they connect different moments of reproductive in/justice.³¹ But the entangled forms of new materialists were also hovering in the air, with their feminist concern for the materiality of lively objects,³² a concern that has had significant influence on scholarship about law and time. But my aim here is to think through the right to continuous improvement of living conditions from an ‘older’ materialist feminist perspective, one which sees connections with these other sources of knowledge, and imagines the right as fruitfully, if sometimes frustratingly, entangled. How is such a right a legal form of social reproduction - a kind of legal reproduction we might say - as it reproduces with legal sources of normative timeliness, material time and felt temporality?

In what follows, I show firstly how legal commitments to timeliness are not just a matter of good process, but carry normative dimensions, normative dimensions that could be light touch. Progressiveness may be the default norm informing a sense of legal timeliness that rights labourers could put to work in the right to continuous

³⁰ D Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Duke University Press 2016) 91.

³¹ R Fletcher, ‘#Repealedthe8th: Translating travesty, global conversation and the Irish abortion referendum’ (2018) 26 *Feminist Legal Studies* 233, 244.

³² E Grabham n 19; M Davies n 3; M Davies, ‘Material subjects and vital objects — prefiguring property and rights for an entangled world’ (2016) 22(2) *Australian Journal of Human Rights* 37.

improvement of living conditions. But other light legal norms of timeliness – disruptive, enduring, punctual - are also available for the legal reproduction of the right. The right may indeed become entangled as the interactivity of legal relations brings these different norms to bear on it. That tangle may confuse and distract, but it could also become a kind of care infrastructure as rights labourers find sources of shelter in the different normative layers for reproducing continuity. Secondly rights labour could reproduce continuous improvement by drawing on the material resources of care labour and lively objects. It could synchronise and sequence the different rhythms and routines involved in juggling multiple materialities for counting time sustainably. This synchronising and sequencing sometimes occurs by working with the micro-processes of time as the counting of cells or the predictions of drugs manuals provide speeds which expand or contract the pace of the sequence. Thirdly, continuity might reproduce temporality by producing feelings, emotions and affects which hold up, or support, the people, things and relations of time-making and flesh out an ephemeral legal infrastructure for social reproduction.

2. Social reproduction, legal time and the continuous improvement of living conditions

All the care work, cleaning, and maintenance, and the work done within the health care system and in agriculture are *indispensable* infrastructure today. What are the criteria for declaring them as such? It is the fact that they express *capital's limit: what social life cannot do without in order to continue*.³³

I turn to social reproduction theory in seeking out a materialist approach to the form as well as the content of rights, a materialist approach which sees the danger that 'continuous improvement' will be mobilised by extractive social relations whatever our good intentions, but offers a hopeful alternative to paranoid³⁴ critique. Social reproduction theory explains and values the life-making activities that contribute to capitalist economies by generating the people, shelter and community that labour power needs to reproduce itself. As Elias and Rai explain, social reproduction encompasses 'all of those activities involved in the production of life. This includes biological

³³ L Cavallero and V Gago, 'Feminism, the Pandemic and What Comes Next?' (*Critical Times: Interventions in Global Critical Theory*, 21 April 2020) <<https://ctjournal.org/2020/04/21/feminism-the-pandemic-and-what-comes-next/>>

³⁴ E Kosofsky Sedgwick n 27.

reproduction, the work of caring for and maintaining households and intimate relationships, the reproduction of labour, and the reproduction of community itself – including forms of social provisioning and voluntary work. Social reproduction also includes unpaid production in the home of goods and services and the reproduction of culture and ideology that stabilises (as well as sometimes challenges) dominant social relations’.³⁵

Adopting a social reproduction perspective means that we consider, and value, those life-making activities that are necessary for the ‘continuous improvement of living conditions’ (CILC). Social reproduction offers us resources which take us beyond binary approaches to production and reproduction.³⁶ By focusing on the life-making activities that are necessary for production’s generation of surplus value, social reproduction has traced a relationship between reproduction and production. As care and cleaning work have been increasingly commodified in ways which generate precarious, gendered and racialised workforces, life-making activities are rendered productive, but stratified.³⁷ The interactions involved in practical life-making activities may become extractive innovations of capitalist relations, in much the way that the flexibility colleagues practised for each other while ‘balancing’ work and family life has been taken up through governance as a means for stretching the worker into constant availability.³⁸ But they may also be organised so to hold racialised patriarchal capitalism to account and generate the potential for a feminist world. When feminist strikers withhold care, they generate shelter and sustenance for each other.³⁹ If social reproduction offers us a materialist feminist theory which is concerned with tracing relationships between reproduction and production, and the many forms they can take, it also offers us a way to imagine engaging and valuing the work of life-making on its own terms. And the legal labour of making rights work so as to claim necessary resources, build social infrastructure and generates spaces for life, becomes a kind of social reproduction. This is why social reproduction theory offers a critical path beyond

³⁵ J Elias and S M Rai n 11.

³⁶ Mezzadri n 15.

³⁷ S Colen, ‘Like a Mother to Them’: Stratified Reproduction and West Indian Childcare Workers and Employers in New York’ in F Ginsburg and R Rapp (eds) *Conceiving the New World Order* (University of California Press 1995).

³⁸ Grabham n 19 chapter 5; E Grabham, ‘Doing Things with Time: Flexibility, Adaptability, and Elasticity in UK Equality Cases (2011) 26(3) *Canadian Journal of Law and Society* 485.

³⁹ V Gago, ‘#WeStrike: Notes Towards a Political Theory of the Feminist Strike’ (2018) 117(3) *South Atlantic Quarterly* 660; C Arruzza, ‘From Social Reproduction Feminism to the Women’s Strike’ in T Bhattacharya (ed) *Social Reproduction Theory* (Pluto Press 2017) chapter 10.

the materialist analysis of rights as commodity forms that flatten out social life.⁴⁰ If we think about the practical human activity of making rights work for the production of life, this brings rights labour into view as a contribution to social reproduction. This legal contribution is about making life liveable under, and even beyond, capitalism. It offers hope that the legal lifeline offered by rights might become a way out, even as it also might become another thread in the capitalist machine. If the right to continuous improvement is to deliver on such a potential then we need to identify how law makes time, and how legal time-making might contribute to critical rights labour.

One challenge is that much of the law and time literature is informed by theoretical perspectives which are not particularly visible in valuing social reproduction. As Franklin has noted,⁴¹ new materialism and old materialism tend not to be put in conversation with each other. I respond to Franklin's provocation and argue that the new thing-focused materialist approach to timely reproduction may be put to work with an older value-focused materialist approach towards a feminist world of valuing the things that contribute to social reproduction. If we understand the lively objects of a new materialist interest in time, as things which are made and remade, this can complement an old materialist interest in identifying the value of such re/making and organising it for non-capitalist purposes. By figuring out how different theoretical contributions speak to mutual interests in time, we make rights labour reproduce itself in a way which connects across theoretical constituencies.

A materialist perspective on the value of time, such as that provided by Rai and Elias,⁴² is important because it calls for continuity to be replenished. Their work draws out the significance of invisible time spent suturing together productive and reproductive activities, and of its possible redirection. An old materialist approach to time has tended to emphasise the way that clock time organises labour power into blocks of time with deadlines that are commensurable and become the object of exchange.⁴³ More recently, Adkins has argued that we are seeing event time displace clock time as the key mode of post-fordist organising of gendered labour.⁴⁴ But social

⁴⁰ Fletcher n 17.

⁴¹ S Franklin, 'Sexism as a means of reproduction: Some reflections on the politics of academic practice' (2015) 86 *New Formations* 15.

⁴² N 11.

⁴³ C Everingham, 'Engendering Time: Gender equity and discourses of workplace flexibility (2002) 11(2-3) *Time & Society* 335.

⁴⁴ L Adkins, 'Sociological Futures: From Clock Time to Event Time' (2009) 14(4) *Sociological Research Online* 88.

reproduction theory helps us see time and continuity not just as clock time which passes us through the machinery of modern capitalism, and not just as the rhythms of the natural world, but as social time which is material in its need to be fed, nourished and sheltered while developing a world that works with natural rhythms as it lengthens the shadow of machine clocks. A new materialist approach to time such as Grabham's⁴⁵ helps us see how eager objects and artefacts contribute to this process as they also participate in the suturing together of reproduction and production.

Watching how law reproduces with time helps us imagine, and actualise, what continuous improvement might be, and how it could work in multiple ways. The term 'continuous' directly invokes time by conjuring up a normative sense of a commitment to the enduring and ongoing. The 'continuous improvement' also captures time indirectly as a material resource that is a dimension of the living conditions, which are to be continuously improved. Working with the continuous improvement of living conditions can also be thought of as having an affective dimension because different feelings of exhaustion, elation, boredom and more are conjured up as rights work reproduces this commitment. By drawing on the law and time scholarship to imagine what a right to continuous improvement might be, I consider the value of lively objects for the utopian dimensions of social reproduction theory and see the right as the kind of entangled legal form that connects and reproduces even as it holds, and is held by, a range of vibrant things. This entangled right has a role to play in building and rebuilding social infrastructure as its legal form approaches time as a legal norm, as a collection of material resources, and as a felt legal arrangement.

3. CILC as a multiple normative commitment to timeliness

Working with a normative sense of continuous improvement does not have to commit rights reproducers to the kind of continuity we associate with capitalist extractive or liberal progressive social arrangements. Rather reproducing with rights means that we can search for normative commitments that may be more faded in legal backgrounds or buried in legal processes and select them into the form of continuity that comes to occupy the right. Even if rights labour works on uneven terrain, it is a labour which involves numerous processes of socio-legal translation and carries multiple normative commitments as a result. As I show here, norms of progression, disruption, endurance

⁴⁵ Grabham (n 19) chapter 1.

and punctuation are among those available for legal reproduction of continuity.

When scholars of law and time show how ideals of timeliness come to operate as commitments that drive law along, they are drawing out the more normative implications of time-in-law. Much of this work problematises an understanding of time as a passive medium through which law passes.⁴⁶ Rather they draw out and criticise the assumption that timeliness, particularly the state's timeliness, is measured by reference to linear progression and, what we might term, a modernist will to improve.⁴⁷ The critique of linear timeliness has produced a desire for the untimely, as a 'leap into the future',⁴⁸ a move which seeks to unlock the disruptive potential of the untimely as that which is not recognizable in the terms of the present. For McNeilly untimeliness offers international human rights an orientation not just to the future, but to the radical possibilities of an unknowable future.⁴⁹ This call for untimeliness represents a yearning for disruption and a break with the here-and-now of international human rights, a here- and-now that is constantly retrieving 'the past as a source or rationalisation of present obligation'.⁵⁰ The unknown untimely represents an open uncontaminated future for human rights, one which is 'inherently open to unexpected voices and directions',⁵¹ with their promise of novelty and excitement. This is a move from criticising the flattening, thinning effects of a commitment to linear progression towards valuing the disruptive, unsettling effects of breaking away from the line. The challenge perhaps is to hold onto lines and breaks as one way of understanding the timely, and to welcome the exploratory generative possibilities that may come with turns to unknown times, while recognising the limits of the known and timely as they exist. But other ways of knowing timeliness beyond the linear and disruptive as it moves in and out of international human rights call for recognition.

Parfitt has offered a modular approach to the history of international law as an alternative to the linear, link-in-a-single-'progressive'-chain approach.⁵² She suggests that the historical time of international law can be organised into items in a frame, and taking the form of a shadow box assemblage of found objects and images, which may

⁴⁶ Mawani, Grabham, Chowdhury (n 19).

⁴⁷ Greenhouse (n 19)

⁴⁸ E Grosz, 'The untimeliness of feminist theory' (2010) 18(1) *NORA* 48, 49.

⁴⁹ McNeilly (n 21) 818

⁵⁰ A Orford, 'On International Legal Method', (2013) 1 *London Review of International Law* 166, 175.

⁵¹ McNeilly (n 21) 824.

⁵² R Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019) chapter 4.

be viewed from different angles. This sense of law's time as a matter of on-going assemblage and retrieval takes us away from the linear norm of progression and instead offers the possibility of holding multiple norms together as we flesh out what the continuous might be. If the normative timeliness of the continuous can be *multiple* then the form of the legal right can become visible less as something flattened and flattening and more as something layered, porous and entangled.

In anticipating how the legal form of CILC might be worked into being, it might be fruitful to pay attention to how time multiplies across other legal sources that have an impact on rights forms. Harrington has shown us how 'rival modes of temporality' work through law even as general forms such as precedent or statute seem attached to singular modes.⁵³ Echoing Mawani's depiction of the common law as enduring in a Bergsonian sense,⁵⁴ Harrington notes that precedent is typically seen as producing *enduring* time, while statute produces *punctual* time as the adoption of legislation announces some significant legal change.⁵⁵ The sense in which the common law doctrine of precedent conjures up enduring legal time is important since it captures one key dimension of law's perceived contribution to social infrastructure as continuity and stability. Legal order is represented as ongoing and ever present as precedent makes law reproduce by looking backwards to pick up the legal thread that it will carry forward, seamlessly. But as Chowdhury⁵⁶ has shown, the adjudicative temporality of judicial working of precedent sometimes makes the factual context disappear, and often has half-hidden modes of selecting certain factual aspects, modes whose discovery, application and reproduction become part of legal expertise. For my purposes, this shows how the legal reproduction of continuity through common law reasoning is not exclusive, but works with other registers of time. If even the legal forms of common law, with their deep attachment to duration, reproduce with diverse commitments to timeliness, then it becomes even more possible to see a right to CILC as having multiple commitments to progressive, disruptive *and* enduring time. If continuous improvement of living conditions is to endure as a legal form, the form itself will need to be sustained by selecting in timely legal knowledge in sustainable ways.

⁵³ J Harrington, 'Time as a dimension of medical law' (2012) 20(4) *Medical Law Review* 491, 495; see also J Harrington n 19 chapter 4.

⁵⁴ Mawani (n 19).

⁵⁵ Harrington (n 19) 73-74.

⁵⁶ T Chowdhury, 'Temporality and Criminal Law Adjudication's Multiple Pasts' (2017) 38(2) *Liverpool Law Review* 187; see also Chowdhury n 19.

In Harrington's terms, the *punctual* legal timeliness of statute makes a different normative contribution to the relationship between law and time, because it is a legal form which is focused on facilitating legal change and a break with the past. We might think then of punctual timeliness as contributing to an ephemeral legal infrastructure for social reproduction by providing a different kind of legal support, one which builds a legal system from discrete legal pieces that are separate from each other, as they fit together. The punctual time of a statute that is normatively committed to change also operates in a non-exclusive way. The different senses of normative timeliness that operate in, around and beyond linear progression of time and its future and past disruptions, give us a different way to understand the story of rights as legal forms that contribute, unevenly, to social reproduction. Thinking about different norms of timeliness as they actually exist in legal forms may give us a way of working rights with a light normative touch, and one that recognises and selects from co-existing multiple normative commitments.

4. CILC as a collection of material resources for time

Time becomes continuous as it is made and remade with material resources. If we identify how material processes and things have the effect of re/making continuous time, then we can trace a form of rights that holds these resources together for replenishing, and makes CILC possible. While old materialists tend to draw attention to the processes that generate value for capitalism as they organise time, new materialists are more interested in the energy that circulates through the unfolding of lively objects. Even if each school of thought tends to avoid the preoccupations of the other,⁵⁷ there is increasing interest in a dialogue between them.⁵⁸ From an older materialist perspective, scholars such as Everingham⁵⁹ have engaged with a Thompson-inflected Marxist distinction between the clock time of the factory and the rhythmic time of social and environmental life, to draw out the significance of the time spent in domestic labour. She argues that making arrangements for feeding, clothing, and cleaning, involves not just the spending of time on care, but engages a kind of managerial labour which has to juggle multiple schedules and commitments. Coordinating the different schedules of household members by sequencing different

⁵⁷ Franklin (n 41).

⁵⁸ See Hohmann (n 29).

⁵⁹ C Everingham (n 43)

activities, so that the shopping gets done after work and before picking up the children, is labour which keeps capitalism going by softening the effects of work.⁶⁰ While the clock and calendar of the marketplace will often take priority in being accommodated by this domestic juggling, Everingham shows us how domestic labour contributes to social reproduction by making time for other people. This labour, or ‘conscious practical activity’,⁶¹ negotiates with the biological and communal rhythms that run through eating and other necessary activities, as well as accommodating the clock time of schedules geared towards market production. By doing the background work of sequencing and synchronising the activities which contribute to social reproduction, domestic labourers generate value by making time available for others. When the activities of domestic labour are commodified and stratified, the material process of juggling can be seen to move across reproduction and production.⁶² Activities such as mood management, though once associated with a domestic sphere of unpaid, sacrificial labour, have come to be recognised as occupying a key material role in the paid work-place, even if they get characterised as ‘immaterial labour’.⁶³ A reproductive temporality, which enables, supports and replenishes this juggling of activities, calls for a legal form of continuity that holds things together by sequencing and synchronising.

Social reproduction theory is being revitalised as the pressure on care provision, even before the pandemic, demands renewed engagement with theory which values the withdrawal of labour and care from capitalist arrangements and its redeployment elsewhere.⁶⁴ As feminists reinvent the strike so that it also entails more sporadic and less durational withdrawals of care, this social form makes the value of care visible as that which we cannot do without.⁶⁵ One of the ongoing tensions in social reproduction theory is the degree to which it is held accountable to Marxist theories of value.⁶⁶ Ferguson claims that social reproduction feminists of the autonomist school (such as Federici) have not provided an adequate account of how social reproduction contributes to capitalism if not as commodifiable labour. But this social reproduction theory is

⁶⁰ Adkins (n 44).

⁶¹ Ferguson (n 12) 9-19.

⁶² Colen (n 37); Bakker (n 11).

⁶³ See further Alessandrini (n 11).

⁶⁴ C Barbagallo and S Federici, Introduction to care work and the commons (2012) *The Commoner* 15 <<https://libcom.org/library/commoner-15-care-work-commons>>

⁶⁵ Gago (n 39); Arruzza (n 39).

⁶⁶ Ferguson (n 12); Alessandrini (n 11); Bakker n 11; Mezzadri n 15.

giving value to the labour of re-arranging life-making on its own terms, and not on capitalist terms. Federici and Gago draw out the significance of soup kitchens⁶⁷ and communal gardens⁶⁸ as sites of life-making activity, but life-making activity which is not accountable to capitalist production. Other activities such as mutual aid neighbourhood group⁶⁹ and abortion support networks⁷⁰ organise support and sustenance in ways that refuse to be accountable to capitalism. Time, which is spent in making more time for others through cooking, cleaning and caring, shows us how social reproduction may generate a non-capitalist care infrastructure. The slow movement, including the version which seeks to re-organise the neo-liberal university,⁷¹ similarly explicitly intervenes into the accelerated paces and intense rhythms of universities, farms, and kitchens in order to claim space for doing otherwise. These thinking activities forge a continuity with the material time that is given value and taken from us through capitalism, but sequence reproductive events so as to achieve a re-arrangement of material time in a way that is sustaining and supportive.

This sense of time as a material resource that is reproductive has a materialist feminist sensibility in wanting to value time spent in making life. Time may be natural but of a nature that is also always social, a social nature that is organised by the operations of the mechanistic clock, but may escape those operations. This time is part of a socio-natural world which shapes and is shaped by labour, including rights labour. Grabham's new materialist understanding of brewing time, shares this understanding of time as being re-arranged and shaped in the social world. Building on Greenhouse, she is interested in displacing the understanding of time as a vacuum through which law passes.⁷² Time is not a neutral medium in which we exist, but a product of our (partial) being in the world, a product which may attach to and detach from that world and the beings in it.

For Grabham, the material aspects of temporality are co-produced through the interaction of humans and non-humans, as objects emerge and make their presence felt. She looks at how time is made out of things in interaction, and gives us a way to identify how 'small things' – cells, documents – are brewed into legal time. Stretches of time

⁶⁷ V Gago, *Feminist International* (Verso 2020) 40; Cavallero and Gago n 33;

⁶⁸ Federici n 13.

⁶⁹ D Spade, *Mutual Aid: Building Solidarity through this crisis (and the next)* (Verso 2021)

⁷⁰ D Duffy, 'From Feminist Anarchy to Decolonisation: Understanding Abortion Health Activism Before and After the Repeal of the 8th Amendment' (2020) 124(1) *Feminist Review* 69.

⁷¹ Mountz et al (n 16); Van Marle (n 16).

⁷² Grabham (n 19); Greenhouse (n 19); see also Mewani n 19; Kennan n 16.

take on a life of their own, but a life which does not begin or end just with itself. According to this understanding, continuous time can be made run differently depending on how non-human things interact with humans. Grabham is interested in drawing out the significance of the things that are the objects of labour in the co-production processes that she explores, rather than in the labour itself. While her approach foregrounds the co-producing of time that happens as cell loads are counted and drug manuals are read, Grabham pays close attention to the activist lawyering for clients living with HIV/AIDS as the legal process through which time is brewed for clients. This lawyering is socially necessary labour which facilitates the counting of cell loads and the reading of drug manuals for client-led purposes.

The new materialist desire to focus on the liveliness, vitality or eagerness of objects and the vibrancy of matter gives old materialists and social reproduction theorists a way to show how material things take on life. The legal labour of the activist lawyer goes the extra mile to work out ways of counting a client's lifetime by reference to their viral load so that a disabled future comes into legal view for the purposes of making a claim. This going the extra mile is a kind of social reproduction that is done in the site of productive labour. It is a life-making activity that takes us beyond the binary of reproduction and production.⁷³ The brewing of time with such eager objects could be thought of as a kind of legal reproduction, which joins with the juggling of material activities to make time for others. Both forms of working material time, and juggling lively objects, show us the importance of sequences and synchronicities to the legal labour that reproduces a right to continuous improvement of living conditions.

5. CILC as a felt arrangement of temporality

Rights are typically figured as a kind of solution to some kinds of exhaustion as they promise a remedy for a lack of housing, or the loss of a loved one. Being made wait for rights⁷⁴ continues the felt experience of being neglected and abandoned by law, a continuity that pulses with intensity as waiting deepens and reiterates the trauma of neglect. As Enright has shown, the delay and denial of legal remedies for historical injustices such as institutional abuse and obstetric violence deal a second blow to survivors.⁷⁵ Reproducing with rights surfaces an anticipation that the rights labour will itself be exhausting, an exhaustion which falls unevenly on racialised, gendered and

⁷³ See further Alessandrini n 11; Bakker n 11, Mezzadri n 15.

⁷⁴ Young (n 22)

⁷⁵ Enright (n 19)

classed bodies, even if moments of joy are shared along the way. Knowing that the system can speed up when matters become characterised as urgent, and the uneven way this happens, becomes another source of frustration, if sometimes the motivating kind. As different feelings of exhaustion, joy, and urgency run through encounters with law they generate mood and atmosphere. A sense of curiosity hovers in the legal air. Could a legal form of continuity reproduce an atmosphere of shelter through the deployment of rights' affective and emotional connections?

Scholars of affect have thought us to appreciate the visceral embodied responses which move people and things along and contribute to our sense of 'being in time'.⁷⁶ Feelings encompass a multitude. We might want to distinguish 'emotions' or those feelings that work with consciousness, and may even be rehearsed in their expression of anger, frustration and joy, from 'affects' as those feelings that are more visceral and spontaneous in their almost pre-conscious reaction to pain and pleasure. Drawing on Bakhtinian chronotopes, or spacetimes, Valverde shows us how temporalities are enacted through legal rhetoric as space becomes charged and time 'takes on flesh'.⁷⁷ This affective charging means that governance projects at the same spatiotemporal scale might well be distinguished by mood. For Valverde, mood means 'the ready-made combination of affective and aesthetic elements that are widely used'⁷⁸ and not idiosyncratic. She gives the example of how the documentation of the effects of climate change on infrastructure will likely have very different governance responses depending on whether the prevailing mood is one of optimistic can-do reformism, or one of apocalyptic fatalism. In thinking about how rights labour might combine different affective and emotional elements through a legal form of continuity, I turn to those who have shown us how practices of rendering likely, expressing concern, and translating travesty make a difference to the felt reproduction of temporality

Grabham's activist lawyers picked over legal technicalities and mundane bits of evidence in order to flesh out temporalities of likelihood, uncertainty, and progression through the generation or modification of affects of pressure and urgency.⁷⁹ As lawyers move clients along towards a claim for disability by finding ways to turn HIV related cell counts and drug regimens into legal evidence of a qualifying illness, a

⁷⁶ Valverde (n 19) 78.

⁷⁷ Valverde (n 19) 33

⁷⁸ Valverde (n 19) 78

⁷⁹ Grabham (n 19) chapter 3.

temporality of pressure with its atmosphere of anticipated fearful affects is generated. The use of timely material resources, with their affective dimensions, generates feelings and visceral sensations, which themselves go on to manage the use of timely resources. The feeling of being rushed along, or of being uncertain about the likelihood of something happening, is a sensual arrangement of time. A temporality like likelihood meant that ‘more likely than not’ became the legal test for a future impairment as a result of living with HIV, a legal test which involved testing for antibodies in the here and now, and reading a likely, not certain, future from test results. Generating this feeling of something being more likely than not provides a way of managing uncertainty and looking towards the future, without erasing the uncertainty or disconnecting the now from that future. If we understand continuous through the register of likelihood and continuous becomes more continuous than not, then the possibility for continuity to have different rhythms and intensities while keeping going, comes into view.

In Roele’s⁸⁰ review of Valverde’s *Chronotopes*, she talks about how the preambulatory practices of international law play with mood as they conjure up a community that has long existed, while fixing the expression of concern to the moment of creation through the grammatical form of the continuous present. Preambular paragraphs set the mood of the United Nations Security Council’s resolutions as they express concern, condemn or, graver still, deplore⁸¹ activities that step outside the zone of acceptability. Roele shows how this chronotope’s use of time, space and mood in evoking continuity had the legal effect of providing the UK with support for the otherwise unlawful war against Iraq. Overcoming the fact of a 12 year hiatus between the UNSCR’s authorization of force against Iraq over the invasion of Kuwait in 1990, and the 2002 recognition of a material breach of Iraq’s obligations was made more plausible Roele argues by relying on the chronotope of the continuous threat as reflected in the grammar and language of the original’s preambular paragraph. If the continuity of a concerning threat in a UNSCR can draw on the time, space and mood of its chronotope to render war plausible, perhaps the continuity of an improvement in living conditions can similarly put mood to work in generating a plausible atmosphere of sustainability.

⁸⁰ I Roele, ‘Reading UN Security Council Resolutions Through Valverde’s Chronotopes’ (2015) 23(3) *Feminist Legal Studies* 369.

⁸¹ Ibid. 372.

Rights movements, which have laboured long and hard to ‘translate a travesty’⁸² by getting a right on the legal table, give us another perspective on the significance of a mood of continuous concern.⁸³ Such movements teach us the importance of finding ways to claim the joy of achieving a rights gain while being attentive to the solemnities of simultaneous rights failures.⁸⁴ The movement to repeal the eighth amendment and legalise abortion in Ireland was, is, an example of a campaign which achieved a momentous legal change against significant odds and through a popular vote for constitutional amendment after 35 years of critique. But it was, is, also one moment in an ongoing and continuous struggle for reproductive justice. The moment of repeal may always be fixed to the joyful tears of the 25th May 2018. But it is also intimately connected to all the other moments of continued struggle for repair of the heartache of forced adoptions, concealed burials, and bruised reproductive bodies that continue to reverberate and claim legal space.⁸⁵ If continuity can work a mood of concern into a justification for war, continuity can also conjure up felt arrangements for joyful rights-making, rights-making which provides shelter from the storm.

6. Conclusion: Entangled legal forms

A right to continuous improvement of living conditions needs to stand tall against practices of continuity which extract support and deplete supporters without return. Such a right could be informed by practices of continuity which work with timely norms, materials and feelings. This means figuring out how to hold multiple normative commitments to continuity in place with a light touch, how to arrange time’s material resources sustainably through sequencing and synchronising, and how to generate an atmosphere of continuous shelter through rights’ felt connections. Engaging with materialist scholarship on social reproduction and legal scholarship on time brings the

⁸² Fletcher (n 31)

⁸³ K Browne and S Calkin (2020) *After Repeal: Rethinking Abortion Politics* (London, Zed); A Carnegie and R Roth, ‘From the Grassroots to the Oireachtas: Abortion Law Reform in the Republic of Ireland’ (2019) 12 *Health and Human Rights Journal* <<https://www.hhrjournal.org/2019/12/from-the-grassroots-to-the-oireachtas-abortion-law-reform-in-the-republic-of-ireland/>>; E Dążkiewicz, T Strong, N Scheper-Hughes, H Turpin, AJ Saris, J Mishtal, H Wulff, B French, P Garvey, D Miller, F Murphy, L Maguire and MN Mhórdha, ‘Repealing Ireland’s Eighth Amendment: Abortion rights and democracy today’ (2020) 28 *Soc Anthropol* 561; Enright, McNeilly and de Londras (n 10)

⁸⁴ F. de Londras, ‘“A Hope Raised and then Defeated?”: The continuing harms of Irish abortion law’ (2020) 124 *Feminist Review* 33-50; P Rivetti, ‘Race, Identity and the State After the Irish Abortion Referendum’ (2019) 122 *Feminist Review* 181-188.

⁸⁵ See M O’Rourke, K O’Donnell, J Smith (eds) ‘Towards Transitional Justice in Ireland? Addressing Legacies of Harm’ (2020) 55(1&2) *Eire-Ireland: A Special Issue*.

possibility of putting old and new versions of materialism into conversation with each other, and reproducing temporality anew. This theorising also gives us a way to pick up the critique of binary approaches to timeliness in human rights, engage with different legal senses of time, and use an appreciation for reproductive temporality to flesh out a materialist feminist approach to rights form.

If the right is to become capable of providing an alternative to the extractive processes associated with commodified forms, the legal form needs to foreground the significance of rights labour which does care work and builds indispensable social infrastructure. Current older materialist approaches to rights forms remain focused on the way that rights extract commodity value, and implement a flattening exchange of apparent commensurables. This critical work is important, and I count myself as a participant in it.⁸⁶ But we need a theoretical means of articulating the material value of all the other ways of doing rights including in their vernacular forms. When rights-work is doing sustainable social reproduction and making life liveable, it takes the material legal form beyond the commodity-form since these rights are thick with multiple normative possibilities, layered in their sequencing and synchronous dimensions, and full of felt arrangements.

Moving from a legal context where time for social reproduction is extracted with little return, to one where it would be replenished, requires the transformation of the form of rights through its occupation. Such occupations could make rights hold multiple matterings of timeliness, and make movement beyond the binaries of un/timely progress possible. They would draw on material processes and things in reproducing continuity, and they would arrange affects and feelings so as to keep life moving along. The unwieldiness and multi-directionality of these rights occupations means that there is always the risk that they fail either by falling apart or by being captured and co-opted. But while they persist they throw out a lifeline which could become a thicker care infrastructure joining and supporting all those engaged in life-making activities.

These entangled legal forms carry their social relations within the right and hold out a lifeline even as they absorb the right-holder into the entangled system. Entangled legal forms of rights offer an alternative to the more conventional materialist approach to rights which sees them as commodity forms facilitating exchange and extraction. Entangled rights share the materialist understanding that such legal forms are likely to

⁸⁶ Fletcher (n 17).

overwhelm and exhaust, as entanglements wear rights-holders out and distract from the systems holding the tangles in place. But tangled threads also offer a lifeline and shelter as they provide legal places for critical occupation and legal pathways through the violence. If we can make these faint places and pathways more visible through pulling on the entangled legal form of a right to continuous improvement of living conditions, we can expand the collective work of transforming rights protections into the building blocks of another world. Such a materialist conception of rights as legal forms that reproduce *with* time could work concretely as international human rights, but also in collaboration with constitutional rights, common law rights, statutory rights, and vernacular rights. Reproductive temporalities of entangled rights provide a hopeful but grounded alternative to the idea of rights as either instruments of progress or tools of commodification, an alternative which identifies rights work as a kind of reproductive labour.